

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 10,556
)
Appeal of)

INTRODUCTION

The petitioner appeals the Department of Social Welfare's decision to deny her request for assistance with her education through the "Reach-Up" program.

FINDINGS OF FACT

1. The petitioner, who is the single mother of two small children, is an ANFC recipient and a participant in the Department's "Reach-Up" program. The petitioner's goal in the program is to earn a bachelor's degree and thereafter a master's degree in family and child counseling. Toward this end, the petitioner has been taking courses, first at a state college, and then at a community college since September of 1988. Thus far, she has attended four semesters and earned 33 credits. The Department has assisted her by providing child care, transportation, and other support expenses.

2. Prior to the start of the fall 1990 semester, the petitioner had maintained a cumulative 2.0 or "C" average. She had considerable difficulty with her past coursework, almost all of which has been of a remedial nature, but prior to the fall of 1990, she had managed to satisfactorily complete the requirements through a good deal of effort on her

part. The petitioner attributed her difficulty to a possible learning disability which she said was a problem for three of her sisters. Most of her teachers and her counselor at school have urged her to take more remedial courses in basic learning skills but she has not followed that recommendation because she says she does not have time to schedule it in.

3. In the fall of 1990, the petitioner took four courses at the community college totaling twelve credits, which was twice her usual semester load. Unlike the courses that she took previously, these four courses were solid college level courses and not remedial in nature. In spite of considerable effort on her part, the petitioner did not pass three of the four courses. (She stopped attending two of the courses after the drop period had ended.) Her semester average was .5 and her cumulative average dropped to 1.45. She was subsequently notified by the college that she was being placed on academic probation.

4. On December 4, 1990, before learning of her grades, the petitioner's "Reach-Up" social worker wrote her with the name and phone number of a person at her college who is interested in learning disabilities to see if her situation could be assessed. The petitioner did not follow up on that suggestion but instead sought assistance through the Vocational Rehabilitation Division where a psychological assessment was later performed at her request. That assessment did not specifically test for learning

disabilities but did conclude that the petitioner had general difficulties with concentration and understanding directions, visual cues and complex situations and tasks. She was diagnosed as having "borderline intellectual functioning" and "mixed specific developmental disorder" with a full scale I.Q. of 77. It was recommended that the petitioner seek an individualized approach in her efforts to further her education and suggested that she may be "more successful in a hands-on type of situation as opposed [to] independent problem-solving". Counseling was also recommended for personal problems.

5. On January 27, 1991, the petitioner submitted a new "Reach-Up Post-Secondary Education Plan" which, according to new procedures, was to be reviewed and passed on by a committee consisting of her social worker, a representative of her college, a job planner at D.E.T., and a supervisor from D.S.W. That plan asked for assistance with continued schooling which the petitioner planned to pursue at a different college in May. The petitioner did not submit nor notify the review team of the existence of the psychological report from Vocational Rehabilitation. (That report was first presented by the petitioner at the hearing.) Neither did she inform the team of her placement by the college on academic probation status, although the team itself became aware of that fact through other channels. The review team concluded that the petitioner's request for services should be denied due to her low grade

point average and notified her of that fact in a letter dated May 24, 1991 which is attached hereto and incorporated by reference as Exhibit No. 1. The petitioner was also advised that after obtaining specific learning disability assessments, a new educational plan could be drawn up between the petitioner and her teachers as to how these problems might be overcome.

6. Because the Department did not make a decision on her "Reach-Up" plan before the new semester began,¹ the petitioner had already started at the new college and was again taking 12 credits. The petitioner interpreted the psychologist's assessment she received from Vocational Rehabilitation as showing that she had no learning disabilities but was rather a "slow learner". She attributed her inability to complete her coursework in the fall of 1990 principally to "taking too many courses" at a time when she had baby-sitting difficulties. She also concedes, however, that some of her difficulty was due to poor writing skills. She pointed out as proof of her ability to do college level work that she did receive a grade of "C" in one of the two courses she completed in the fall of 1990 (Introduction to Psychology) and that she had received an "A-" on the midterm exam. She believes her performance was primarily influenced by outside factors (baby-sitting, participation in the Jobs Training Program) which she thinks she has controlled this semester and does not believe she currently has any significant impediment to

continuing to pursue college level courses.

ORDER

The Department's decision is affirmed.

REASONS

The "Reach-Up" program is Vermont's work and training program for ANFC families authorized and partially funded by the federal Job Opportunities and Basic Skills Training program of the federal Family Support Act at 42 U.S.C. § 602(a)(19)(A). See W.A.M. § 2340. The mission of the program is to foster long-term independence from welfare "through support services". W.A.M. § 2340.2. Persons who participate in the "Reach-Up" program are assessed for "employability" and, if deficits are found, an "employability development plan" (E.D.P.) is created and agreed to by the participant and the Department. Generally, a participant can be terminated from this program if she fails "with or without good cause to make good and satisfactory progress toward the completion of the E.D.P. within the target dates specified and the time requirements". W.A.M. §§ 2343.2, 2343.3.

Although the "Reach-Up" program is thus not an "entitlement program", (See W.A.M. § 2340.2) the regulations nevertheless requires that "All applicants and recipients shall be notified in writing of their particular status or change in status, the exemption criteria, the rights and responsibilities associated with this status, the right to

request conciliation, the potential sanction for non-cooperation and the right to a fair hearing if they do not agree with the status determination".

The petitioner brings this appeal pursuant to the above regulations and challenges the Department's proposal to deny services to her under the E.D.P. submitted by her in January of this year. In support of its action, the Department cites specific regulations which support the funding of post-secondary education only in certain circumstances, the pertinent circumstances being the following:

Approval of each semester of an E.D.P. including post-secondary education shall be contingent upon the individual's attainment of a "C" or above average in the immediately preceding semester of coursework. Individuals are responsible for providing their case managers with a copy of all grades within 30 days of their issuance. Individuals must also conduct themselves consistent with the standards necessary to remain members in good standing of their college community. A one-semester waiver of the "C" or above average requirement is permitted under extraordinary circumstances such as an individuals' serious illness or injury or a family emergency which was beyond his/her control.

W.A.M. 9 2344.2(12)

The regulation above clearly allows the Department to refuse funding educational programs for persons with less than a "C" average in the preceding school semester. The petitioner does not argue, nor do the facts support, any finding other than that the petitioner had less than a "C" average in the fall of 1990, the semester immediately preceding her application. That regulation provides, however, that an exception can be made in "extraordinary

circumstances". If the petitioner's plan should have been approved it is only if she falls into this latter category.

To be sure, the petitioner suffered no serious illness or injury or family emergency beyond her control which the regulations cites as examples of "extraordinary circumstances". The facts show that the petitioner most likely failed because she attempted to take too many college level courses at one time and because she has learning obstacles of one kind or another which make it difficult for her to satisfactorily complete true college level courses. Neither of these facts constitute a one time unusual or emergency situation as contemplated by the regulation authorizing an exception. Rather, the reasons for the petitioner's difficulty appear to be problems peculiar to the petitioner's abilities which will most likely continue for the foreseeable future absent some further remediation.

It cannot, therefore, be found that the petitioner's situation in the last semester was "extraordinary". In fact, in light of the petitioner's present four course undertaking with no further remediation, her situation in the fall of 1990 appears to be quite "ordinary".

The petitioner's motivation, diligence and sincerity are not in question here. Her insight into the true source of her difficulty is. Given that unfortunate fact, the Department cannot be found to have acted inappropriately in refusing to waive the "C" average requirement for her continued educational support. Although the petitioner is

having difficulty in seeing it, it would no doubt be advantageous to her to stop her schooling temporarily and to get assistance with analyzing what is going wrong and how it might be remediated. She already has a psychologist's report stating that she might need an individualized approach to education and numerous suggestions from her teachers and counselors that she may benefit from more remedial work. To plunge ahead now might very well result not only in a waste of money for the Department, but also a waste of time, energy and money for the petitioner if she continues to fail courses.

The Department has indicated in its proposed action that it is willing to continue to work with the petitioner to develop a new educational plan based on any information which can be obtained about her learning abilities and disabilities. As the petitioner herself is obviously without funds, it is assumed that as part of this offer, the Department will assist the petitioner, to the extent it is able, in obtaining the assessments and remediation she may need in successfully completing her employment goal, a goal which she is obviously very anxious to reach.

FOOTNOTES

¹It took four months to rule on the petitioner's request for assistance through the E.D.P. The Department's witness represented that this occurred because personnel were being eliminated due to state budget reductions. Even in a non-entitlement program, such a delay should be avoided as it is unfair and potentially harmful to applicants.

#